

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VALERIE BROOKS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

MORPHE, LLC, a Delaware limited
liability company,

Defendant.

No. 2:20-cv-1219 KJM DB

ORDER

On September 12, 2022, plaintiff filed a renewed motion for default judgment and noticed the matter for hearing before the undersigned on December 2, 2022, pursuant to Local Rule 302(c)(19). (ECF Nos. 31 & 35.) Plaintiff's motion seeks default judgment on claims that the defendant violated the Americans with Disabilities Act ("ADA") and the California Unruh Civil Rights Act. Having reviewed plaintiff's briefing, the undersigned will deny the motion without prejudice to renewal.¹

In this regard, plaintiff filed the complaint in this action on June 17, 2020. (ECF No. 1.) The complaint is a class action complaint brought by plaintiff individually and on behalf of all

¹ Pursuant to Local Rule 230(g) the undersigned finds the matter suitable for resolution without a hearing.

1 other similarly situated for alleged violations of the Americans with Disabilities Act and the
2 California Unruh Civil Rights Act. On October 16, 2020, plaintiff filed a motion for default
3 judgment. (ECF No. 13.) On February 16, 2021, the undersigned denied that motion without
4 prejudice to renewal. (ECF No. 20.)

5 In the February 16, 2021 order the undersigned advised plaintiff that the motion for
6 default was “defective in several respects[.]” (*Id.* at 1.) One of those defects was plaintiff’s
7 reliance on vague factual allegations concerning plaintiff’s “numerous visits to Defendant’s
8 website” including a “2020” visit. (*Id.* at 2.) The undersigned went on to advise plaintiff that
9 neither the complaint nor motion for default judgment provided “the dates of” plaintiff’s visits.
10 (*Id.*) And that plaintiff failed to “file a declaration in support of the motion for default judgment.”
11 (*Id.*)

12 Nonetheless, plaintiff has again failed to file a declaration in support of the renewed
13 motion for default judgment. And the renewed motion for default judgment again relies simply
14 on the vague and conclusory allegation that plaintiff “visited Defendant’s website numerous
15 times, including in 2020.” (Pl.’s MDJ (ECF No. 31) at 9.)

16 It is true that upon entry of default the complaint’s factual allegations regarding liability
17 are taken as true. Dundee Cement Co. v. Howard Pipe & Concrete Prods., 722 F.2d 1319, 1323
18 (7th Cir. 1983). However, it is also true that the court need not accept as true conclusory
19 allegations. Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). Here, plaintiff
20 has again offered only a conclusory allegation devoid of evidentiary support.

21 CONCLUSION

22 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 23 1. Plaintiff’s September 12, 2022 motion for default judgment (ECF No. 31) is denied
24 without prejudice to renewal of a motion that cures the defects noted above; and
25 2. The December 2, 2022 hearing of defendant’s motion is vacated.

26 DATED: November 29, 2022

/s/ DEBORAH BARNES

UNITED STATES MAGISTRATE JUDGE

27 DLB:6

28 DB\orders\orders.civil\brooks1219.mdj.den2.ord